(B) Cr 401

(1)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

WRIT PETITION NO. 351 /2003

PETITIONERS :

1. Amar Singh, aged about 55 years, S/o. Mohan Singh
2. Kalyan Singh aged about 25 years, S/o. Sahdev Gond.
3. Chhakelal, aged about 55 years, S/o. Dhannu Gond.
4. Budhram aged about 30 years, S/o. Bhaddu Singh Gond.

All are resident of Vill. Masurikhar Tah. Pendra Road, Distt. Bilaspur (C.G.)

P. R. No. 3309/03
Presented by shri R.S. Khare
dated 26/9/03

VERSUS

RESPONDENTS

1. Smt. Girija Devi, aged about 50 years, Widow of late Shyamji Shrivastava.
2. Sandeep Kumar Shrivastava, aged about 29 years, S/o. Late Shyamji Shrivastava
3. Smt. Jyoti Shrivastava, aged about 23 years, W/o. Sandeep Shrivastava

Res. 1 to 3 R/O-Village-masurikhar Teh. Pendra road DIST -Bilaspur (C.G.)

(Legal representative of Jwala Prasad Shrivastava aged about 85 yrs. S/o. Bhagwat Din Shrivastava, Residence of Vill. Masurikhar, Tah. Pendra Road, Dist. Bilaspur (C.G.) – died).

4. Bhuneswar Prasad Shrivastava aged about 40 years, S/o. Hanuman Prasad Shrivastava, R/o. Vill. Amarpur, P.S. Pendra , District – Bilaspur (C.G.)
5. Sultan Singh aged about 30 years, S/o. Amar Singh Gond.
6. Manglu Bhaina aged about 40 years, S/o. Deena Bhaina.

(Resp. no. 5-6 residence of Vill: Masurikhar, Tah. Pendra Road, Distt. Bilaspur (C.G.)

7. State of Chhattisgarh through District Collector, Bilaspur (C.G.)

RECEIVED-COPY
28/X/03
Clerk to A. G. Bilaspur

(1)

(2)

WRIT PETITION UNDER ARTICLE 227 OF THE CONSTITUTUION OF THE INDIA

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(2)

आदेश पत्रक

मामला क्रमांक W.P.3511/03 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	06/02/2004 Shri F.S. Khare, counsel for the petitioners. Shri Praveen Das, Panel Lawyer for the respondents/State. Petitioner has preferred this writ petition under Article 227 of the Constitution of India, being aggrieved by the order dated 23/08/2003 passed by the learned Civil Judge, Class II, Pendra Road, District Bilaspur in Civil Suit No.227-A/2002. Brief facts giving rise to filing of this writ petition are that father of respondent no.1 namely Jwala Prasad filed Civil suit for permanent injunction regarding the suit land situated at village Masurikhar Tehsil – Pendra Road, District Bilaspur on the ground that the deceased/plaintiff was in possession over the suit land and the defendants / petitioners herein are trying to dispossess him from the suit land. However, during the pendency of the suit the original plaintiff i.e., Jwala Prasad died on 11/04/2003. On the death of Jwala Prasad, respondents no. 1 and 2 moved an application under Order 22, Rule 3 of the C.P.C. for bringing them on record as legal heirs of late Jwala Prasad and that application has been allowed by the learned trial Court vide its impugned order. However, the petitioners herein raised the point that apart from respondent no.1 to 3 herein, Vinod Kumar Shrivastava, who is the real son of late Jwala Prasad has not been brought on record but respondent Nos. 1 to 3 mentioned that he is unwilling to join as party, therefore, the names of respondents no. 1 to 3 be substituted whereas the petitioners herein raised the objection that since Vinod Kumar Shrivastava is the real son of late Jwala	

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(30)

आदेश पत्रक

मामला क्रमांक W.P. 3511/03 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -02-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Prasad and he took part in the funeral ceremony of his father and he is the sole heir of the deceased/plaintiff, therefore, he must have been brought on record.

The learned trial Court after hearing the parties disposed of the application vide impugned order and as far as the point raised by the petitioners/defendant in that case is concerned, the Court observed that if any person is interested in bringing the other legal heirs of the plaintiff on record, they can move an application under Order 1 Rule 10 of the C.P.C.

Having heard the learned counsel for the parties and having regard to the facts and circumstances of the case, I am of the opinion that the persons who have been brought on record as legal heirs of late Jwala Prasad, have specifically said that Vinod Kumar Shrivastava who is the real son of late Jwala Prasad, is not interested in pursuing this matter and he is not willing to join the case as a party. They have not disputed that Vinod Kumar Shrivastava is not son of Jwala Prasad nor they have applied for bringing Vinod Kumar Shrivastva on record as the legal heir of Jwala Prasad. In the given situation, the petitioners herein have an alternative remedy available with them if they can raise the point in written statement to the effect that Vinod Kuamr Shrivastva is the real son of late Jwala Prasad. Since he has not been brought on record, therefore, the suit stands abated and he being a necessary party, has not been brought on record, therefore, the suit is liable to be dismissed on that ground.

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(31)

आदेश पत्रक

मामला क्रमांक 3511/03 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 03 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	With the aforesaid observations, this writ petition stands disposed of. Consequently, M.W.P.No.3179/2003 and I.A.No.10055/2003 also stand disposed of. Parties are entitled for certified copy of this order. **Sd/-** **L.C. Bhadoo** **Judge**	

Reg 4